

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

Page 1 of 4

**DOCKET NO.:** 2007-1880-PST-E **TCEQ ID:** RN101544252 and RN101564433 **CASE NO.:** 34981**RESPONDENT NAME:** Best Mart, Inc. dba Kold Spot 32 and Kold Spot 37

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Kold Spot 32, 1207 Highway 157 North, Mansfield, Tarrant County; Kold Spot 37, 7414 Rendon Bloodworth Road, Mansfield, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Convenience stores with retail sales of gasoline</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding these facility locations.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 16, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b> <b>TCEQ Attorney/SEP Coordinator:</b> None <b>TCEQ Enforcement Coordinator:</b> Ms. Judy Kluge, Enforcement Division, Enforcement Team 6, MC R-04, (817) 588-5825; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 <b>Respondent:</b> Mr. Ben Fayyaze, President, Best Mart, Inc., P.O. Box 2429, Granbury, Texas 76048 <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 2, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> November 2, 2007 and November 13, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WASTE</b></p> <p>Kold Spot 32 Station:</p> <p>1) Failure to report a suspected release to the agency within 24 hours of discovery. Specifically, inventory control records for September 2006 indicated a suspected release was not reported [30 TEX. ADMIN. CODE § 334.72].</p> <p>2) Failure to investigate a suspected release within 30 days of discovery. Specifically, inventory control records for September 2006 indicated a suspected release that was not investigated [30 TEX. ADMIN. CODE § 334.74].</p> <p>3) Failure to provide a method of release detection capable of detecting a release from any portion of the underground storage tank ("UST") system which contained regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>4) Failure to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p><b>Total Assessed:</b> \$27,980</p> <p><b>Total Deferred:</b> \$5,596  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$649 (remaining \$21,735 due in 35 monthly payments of \$621 each)</p> <p>RN101544252  <b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>RN101564433  <b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Stations:</p> <p>a. Kold Spot 32 Station:</p> <p>i. The TCEQ DFW Regional Office received documentation verifying that the Respondent implemented a process for reporting a suspected release on December 12, 2007;</p> <p>ii. The TCEQ DFW Regional Office received documentation verifying that the Respondent investigated the suspected release and implemented appropriate corrective measures on November 28, 2007;</p> <p>iii. The TCEQ DFW Regional Office received documentation verifying that the Respondent began conducting proper inventory control procedures and implemented a release detection method on December 7, 2007;</p> <p>iv. The TCEQ DFW Regional Office received documentation verifying that the Respondent submitted an amended UST registration to the TCEQ on December 11, 2007;</p> <p>v. The TCEQ DFW Regional Office received documentation verifying that the Respondent began maintaining Stage II records on-site on December 7, 2007;</p> <p>vi. The TCEQ DFW Regional Office received documentation verifying that one Station representative successfully completed the required Stage II training and each current employee received in-house Stage II training on December 7, 2007; and</p> <p>vii. The TCEQ DFW Regional Office received documentation verifying that the Respondent properly installed drop tubes on December 11, 2007.</p>

<p>3) Failure to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p> <p>4) Failure to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, registration was not updated to reflect the current release detection method, Stage I, and Stage II equipment information [30 TEX. ADMIN. CODE § 334.7(d)(3)].</p> <p>5) Failure to maintain Stage II records at the Station and make them available for inspection upon request by Commission personnel. Specifically, the Stage II maintenance records, test results, and a copy of the CARB Executive Order were not available for review at the time of the investigation [30 TEX. ADMIN. CODE § 115.246(1), (5), and (7)(A) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p> <p>6) Failure to ensure that at least one Station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system and that each current employee received in-house Stage II training regarding the purpose and operation of the vapor recovery system. Specifically, Stage II training for the Station representative and the employees had not been completed [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>		
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Additional ID No(s): 14194 and 47025

5) Failure to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current release detection method [30 TEX. ADMIN. CODE § 334.7(d)(3)].

6) Failure to maintain Stage II records at the Station and make them available for inspection upon request by Commission personnel. Specifically, a copy of the California Air Resources Board ("CARB") Executive Order was not available for review at the time of the investigation [30 TEX. ADMIN. CODE § 115.246(1), (7)(a), and TEX. HEALTH & SAFETY CODE § 382.085(b)].

7) Failure to ensure that at least one Station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system and that each current employee received in-house Stage II training regarding the purpose and operation of the vapor recovery system. Specifically, Stage II training for the Station representative had not been completed [30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

8) Failure to comply with emission control requirements by failing to properly install the submerged fill tubes within six inches from the bottom of the tank. Specifically, the submerged drop tubes on the mid grade and super unleaded tank had eleven inches clearance from the bottom of the tanks [30 TEX. ADMIN. CODE § 115.222(1) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Kold Spot 37 Station:

1) Failure to conduct effective manual or automatic monthly inventory control procedures for the USTs at the Station [30 TEX. ADMIN. CODE § 334.48(c)].

2) Failure to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order and free of defects that would impair the effectiveness of the system. Specifically, the devices were not installed to prevent loosening or over tightening of the Stage I equipment [30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b)].

b. Kold Spot 37 Station:

i. The TCEQ DFW Regional Office received documentation verifying that the Respondent began conducting proper inventory control procedures and implemented a release detection method on December 11, 2007;

ii. The TCEQ DFW Regional Office received documentation verifying that the Respondent installed appropriate devices to prevent loosening or over-tightening of the Stage I equipment on December 7, 2007;

iii. The TCEQ DFW Regional Office received documentation verifying that the Respondent implemented a release detection method on December 11, 2007;

iv. The TCEQ DFW Regional Office received documentation verifying that the Respondent submitted an amended UST registration to the TCEQ on December 12, 2007;

v. The TCEQ DFW Regional Office received documentation verifying that the Respondent began maintaining Stage II records on-site on December 7, 2007; and

vi. The TCEQ DFW Regional Office received documentation verifying that one Station representative successfully completed the required Stage II training and each current employee received in-house Stage II training on December 7, 2007.



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES

Assigned

21-Nov-2007

PCW

25-Feb-2008

Screening

28-Nov-2007

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Best Mart, Inc. dba Kold Spot 37  
 Reg. Ent. Ref. No. RN101564433  
 Facility/Site Region 4-Dallas/Fort Worth

Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 34981  
 Docket No. 2007-1880-PST-E  
 Media Program(s) Petroleum Storage Tank  
 Multi-Media  
 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

No. of Violations 6  
 Order Type 1660  
 Enf. Coordinator Judy Kluge  
 EC's Team Enforcement Team 6

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$9,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0% Enhancement

Subtotals 2, 3, &amp; 7 \$0

Notes

No adjustment due to compliance history.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

10% Reduction

Subtotal 5 \$900

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent came into compliance on December 12, 2007.

0% Enhancement\*

Subtotal 6 \$0

Total EB Amounts \$42

Approx. Cost of Compliance \$4,100

\*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$8,100

OTHER FACTORS AS JUSTICE MAY REQUIRE

0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$8,100

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$8,100

DEFERRAL

20%

Reduction

Adjustment -\$1,620

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$6,480

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 37

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101564433

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

<b>Screening Date</b> 28-Nov-2007		<b>Docket No.</b> 2007-1880-PST-E		<b>PCW</b>																			
<b>Respondent</b> Best Mart, Inc. dba Kold Spot 37		<i>Policy Revision 2 (September 2002)</i>																					
<b>Case ID No.</b> 34981		<i>PCW Revision November 6, 2007</i>																					
<b>Reg. Ent. Reference No.</b> RN101564433																							
<b>Media [Statute]</b> Petroleum Storage Tank																							
<b>Enf. Coordinator</b> Judy Kluge																							
<b>Violation Number</b>		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>																					
<b>Rule Cite(s)</b>		<div style="border: 1px solid black; padding: 2px; text-align: center;">30 Tex. Admin. Code § 334.48(c)</div>																					
<b>Violation Description</b>		<div style="border: 1px solid black; padding: 2px;">Failed to conduct effective manual or automatic monthly inventory control procedures for the USTs at the Station.</div>																					
<b>Base Penalty</b>				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$10,000</div>																			
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																							
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td><b>Release</b></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td><b>Actual</b></td> <td><div style="border: 1px solid black; width: 40px; height: 15px;"></div></td> <td><div style="border: 1px solid black; width: 40px; height: 15px;"></div></td> <td><div style="border: 1px solid black; width: 40px; height: 15px;"></div></td> <td rowspan="2" style="vertical-align: middle;"><b>Percent</b> <div style="border: 1px solid black; padding: 2px; text-align: center;">25%</div></td> </tr> <tr> <td><b>Potential</b></td> <td><div style="border: 1px solid black; padding: 2px; text-align: center;">x</div></td> <td><div style="border: 1px solid black; width: 40px; height: 15px;"></div></td> <td><div style="border: 1px solid black; width: 40px; height: 15px;"></div></td> </tr> </table>					Harm				<b>Release</b>	Major	Moderate	Minor		<b>Actual</b>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; padding: 2px; text-align: center;">25%</div>	<b>Potential</b>	<div style="border: 1px solid black; padding: 2px; text-align: center;">x</div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>
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<b>&gt;&gt; Programmatic Matrix</b>																							
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<b>Matrix Notes</b>	<div style="border: 1px solid black; padding: 2px;">Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.</div>																						
<b>Adjustment</b>				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$7,500</div>																			
				<div style="border: 1px solid black; padding: 2px; text-align: center;">\$2,500</div>																			
<b>Violation Events</b>																							
<b>Number of Violation Events</b>		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>	<div style="border: 1px solid black; padding: 2px; text-align: center;">58</div>	<b>Number of violation days</b>																			
mark only one with an x	daily	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<b>Violation Base Penalty</b> <div style="border: 1px solid black; padding: 2px; text-align: center;">\$2,500</div>																				
	monthly	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>																					
	quarterly	<div style="border: 1px solid black; padding: 2px; text-align: center;">x</div>																					
	semiannual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>																					
	annual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>																					
	single event	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>																					
<div style="border: 1px solid black; padding: 2px; text-align: center;">One quarterly event is recommended based on documentation of the violation during the October 2, 2007 investigation to the November 28, 2007 screening date.</div>																							
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>																				
<b>Estimated EB Amount</b>		<div style="border: 1px solid black; padding: 2px; text-align: center;">\$5</div>	<b>Violation Final Penalty Total</b> <div style="border: 1px solid black; padding: 2px; text-align: center;">\$2,250</div>																				
			<b>This violation Final Assessed Penalty (adjusted for limits)</b> <div style="border: 1px solid black; padding: 2px; text-align: center;">\$2,250</div>																				

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 37**Case ID No.** 34981**Reg. Ent. Reference No.** RN101564433**Media** Petroleum Storage Tank**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	2-Oct-2007	11-Dec-2007	0.2	\$5	n/a	\$5
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of conducting inventory control for all USTs. Date required is the investigation date and final date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$5

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 37

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101564433

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 115.242(3)(A) and Tex. Health &amp; Safety Code § 382.085(b)

Violation Description

Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board ("CARB") Executive Order and free of defects that would impair the effectiveness of the system. Specifically, the devices were not installed to prevent loosening or over-tightening of the Stage I equipment.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the October 2, 2007 investigation to the November 28, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$900

This violation Final Assessed Penalty (adjusted for limits) \$900

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 37**Case ID No.** 34981**Reg. Ent. Reference No.** RN101564433**Media** Petroleum Storage Tank**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	------------------------------	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$500	2-Oct-2007	7-Dec-2007	0.2	\$0	\$6	\$6
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to install devices to prevent loosening or over-tightening of the Stage I equipment. Date required is the investigation date and final date is the date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$500

**TOTAL**

\$6

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 37

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101564433

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A) and Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the October 2, 2007 to the November 28, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$14

Violation Final Penalty Total \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 37**Case ID No.** 34981**Reg. Ent. Reference No.** RN101564433**Media** Petroleum Storage Tank**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	2-Oct-2007	11-Dec-2007	0.2	\$14	n/a	\$14

Notes for DELAYED costs

The estimated cost to provide a method of release detection for the USTs. Date required is the investigation date and final date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$14

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 37

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101564433

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 334.7(d)(3)

Violation Description

Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current release detection method, Stage I, and Stage II equipment information.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

57

Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the October 2, 2007 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$900

This violation Final Assessed Penalty (adjusted for limits) \$900

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 37**Case ID No.** 34981**Reg. Ent. Reference No.** RN101564433**Media** Petroleum Storage Tank**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	2-Oct-2007	12-Dec-2007	0.2	\$1	n/a	\$1

**Notes for DELAYED costs**

Estimated cost to submit an amended UST registration form to the TCEQ. Date required is the investigation date and final date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$100

**TOTAL**

\$1

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 37

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101564433

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 115.246(1), (5), and (7)(A) and Tex. Health &amp; Safety Code § 382.085(b)

Violation Description

Failed to maintain Stage II records at the Station and make them available for inspection upon request by Commission personnel. Specifically, the Stage II maintenance records, test results, and a copy of the CARB Executive Order were not available for review at the time of the investigation.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the October 2, 2007 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$900

This violation Final Assessed Penalty (adjusted for limits) \$900

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 37**Case ID No.** 34981**Reg. Ent. Reference No.** RN101564433**Media** Petroleum Storage Tank**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	------------------------------	---------------	------------	-----	----------------	---------------	-----------

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	2-Oct-2007	7-Dec-2007	0.2	\$5	n/a	\$5
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to establish a Stage II record keeping system at the Station. Date required is the investigation date and final date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$5

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 37

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101564433

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 6

Rule Cite(s)

30 Tex. Admin. Code § 115.248(1) and Tex. Health &amp; Safety Code § 382.085(b)

Violation Description

Failed to ensure that at least one Station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system and that each current employee received in-house Stage II training regarding the purpose and operation of the vapor recovery system. Specifically, Stage II training for the Station representative and the employees had not been completed.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		X	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the October 2, 2007 investigation date to the November 28, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$900

This violation Final Assessed Penalty (adjusted for limits) \$900

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 37**Case ID No.** 34981**Reg. Ent. Reference No.** RN101564433**Media** Petroleum Storage Tank**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
(No commas or \$)							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$500	2-Oct-2007	7-Dec-2007	0.2	\$5	n/a	\$5
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of training a Stage II representative in the operation and maintenance of the Stage II equipment.  
Date required is the investigation date and final date is the date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$5

## Compliance History

Customer/Respondent/Owner-Operator:	CN601585730	Best Mart, Inc.	Classification: AVERAGE	Rating: 1.02
Regulated Entity:	RN101564433	KOLD SPOT 37	Classification: HIGH	Site Rating: 0.00
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION		REGISTRATION	47025
Location:	7414 RENDON BLOODWORTH RD, MANSFIELD, TX, 76063		Rating Date: September 01 07	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	December 12, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 12, 2002 to December 12, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Philip DeFrancesco	Phone:	(817) 588-5933	

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. If Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 11/18/2003 (253799)
  - 2 11/12/2007 (597397)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A





## Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ  
DATESAssigned 21-Nov-2007  
PCW 28-Feb-2008

Screening 28-Nov-2007

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Best Mart, Inc. dba Kold Spot 32  
 Reg. Ent. Ref. No. RN101544252  
 Facility/Site Region 4-Dallas/Fort Worth Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 34981 No. of Violations 7  
 Docket No. 2007-1880-PST-E Order Type 1660  
 Media Program(s) Petroleum Storage Tank Enf. Coordinator Judy Kluge  
 Multi-Media EC's Team Enforcement Team 6  
 Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

## TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$21,500

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 2% Enhancement Subtotals 2, 3, &amp; 7 \$430

Notes Enhancement for one prior NOV with dissimilar violations.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction Subtotal 5 \$2,150

Before NOV NOV to EDPRP/Settlement Offer  
 Extraordinary  
 Ordinary X  
 N/A (mark with x)

Notes The Respondent came into compliance on December 12, 2007.

Total EB Amounts \$400 0% Enhancement\* Subtotal 6 \$0  
 Approx. Cost of Compliance \$8,200 \*Capped at the Total EB \$ Amount

## SUM OF SUBTOTALS 1-7

Final Subtotal \$19,780

## OTHER FACTORS AS JUSTICE MAY REQUIRE

0.01%

Adjustment \$100

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture the avoided cost of compliance associated with Violation No. 1.

Final Penalty Amount \$19,880

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$19,880

## DEFERRAL

20%

Reduction

Adjustment -\$3,976

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

## PAYABLE PENALTY

\$15,904

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 32

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101544252

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one prior NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 2%

<b>Screening Date</b> 28-Nov-2007 <b>Respondent</b> Best Mart, Inc. dba Kold Spot 32 <b>Case ID No.</b> 34981 <b>Reg. Ent. Reference No.</b> RN101544252 <b>Media [Statute]</b> Petroleum Storage Tank <b>Enf. Coordinator</b> Judy Kluge <b>Violation Number</b> <input type="text" value="1"/>	<b>Docket No.</b> 2007-1880-PST-E <b>PCW</b> <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision November 6, 2007</i>																									
<b>Rule Cite(s)</b> <input style="width: 100%;" type="text" value="30 Tex. Admin. Code § 334.72"/>																										
<b>Violation Description</b> <input style="width: 100%;" type="text" value="Failed to report a suspected release to the agency within 24 hours of discovery. Specifically, inventory control records for September 2006 indicated a suspected release was not reported."/>																										
<b>Base Penalty</b> <input style="width: 100%;" type="text" value="\$10,000"/>																										
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																										
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 10%;">Major</th> <th style="width: 10%;">Moderate</th> <th style="width: 10%;">Minor</th> <th style="width: 10%;"></th> </tr> </thead> <tbody> <tr> <td><b>Release</b></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td></td> </tr> <tr> <td colspan="4"></td> <td> <b>Percent</b> <input style="width: 100%;" type="text" value="0%"/> </td> </tr> </tbody> </table>		Major	Moderate	Minor		<b>Release</b>					Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>						<b>Percent</b> <input style="width: 100%;" type="text" value="0%"/>
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**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 32**Case ID No.** 34981**Reg. Ent. Reference No.** RN101544252**Media** Petroleum Storage Tank**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	30-Sep-2006	1-Oct-2006	0.0	\$0	\$100	\$100
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Avoided cost to report a suspected release. Date required is the date of the suspected release and final date is the date the report was due.

Approx. Cost of Compliance

\$100

TOTAL

\$100

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 32

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101544252

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.74

Violation Description

Failed to investigate a suspected release within 30 days of discovery. Specifically, inventory control records for September 2006 indicated a suspected release that was not investigated.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 5

394 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$12,500

Five quarterly events are recommended from the release investigation date of October 30, 2006 to the November 28, 2007 compliance date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$270

Violation Final Penalty Total \$11,558

This violation Final Assessed Penalty (adjusted for limits) \$11,558

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 32**Case ID No.** 34981**Reg. Ent. Reference No.** RN101544252**Media** Petroleum Storage Tank**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$5,000	30-Oct-2006	28-Nov-2007	1.1	\$270	n/a	\$270

**Notes for DELAYED costs**

Estimated cost to investigate a suspected release. Date required is the date the release investigation was due and final date is the date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$5,000

**TOTAL**

\$270

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 32

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101544252

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A), (d)(1)(B)(ii), and Tex. Water Code § 26.3475(c)(1)

Violation Description Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances. Also, failed to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the October 2, 2007 investigation date to the November 28, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$14

Violation Final Penalty Total \$2,312

This violation Final Assessed Penalty (adjusted for limits) \$2,312

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 32**Case ID No.** 34981**Reg. Ent. Reference No.** RN101544252**Media** Petroleum Storage Tank**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	2-Oct-2007	7-Dec-2007	0.2	\$14	n/a	\$14

**Notes for DELAYED costs**

The estimated cost to provide a method of release detection for the USTs. Date required is the investigation date and final date is the date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$1,500

**TOTAL**

\$14

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 32

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101544252

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description

Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current release detection method.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the October 2, 2007 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$925

This violation Final Assessed Penalty (adjusted for limits) \$925

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 32**Case ID No.** 34981**Reg. Ent. Reference No.** RN101544252**Media** Petroleum Storage Tank**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	2-Oct-2007	12-Dec-2007	0.2	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to submit an amended UST registration form to the TCEQ. The date required is the investigation date and the final date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$1

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 32

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101544252

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 115.246(1) and (7)(A) and Tex. Health and Safety Code § 382.085(b)

Violation Description

Failed to maintain Stage II records at the Station and make them available for inspection upon request by Commission personnel. Specifically, a copy of the California Air Resources Board Executive Order was not available for review at the time of the investigation.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the October 2, 2007 investigation date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$925

This violation Final Assessed Penalty (adjusted for limits) \$925

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 32**Case ID No.** 34981**Reg. Ent. Reference No.** RN101544252**Media** Petroleum Storage Tank**Violation No.** 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$500	2-Oct-2007	7-Dec-2007	0.2	\$5	n/a	\$5
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to establish a Stage II record keeping system at the Station. The date required is the investigation date and the final date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$5

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 32

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101544252

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 115.248(1) and Tex. Health &amp; Safety Code § 382.085(b)

Violation Description

Failed to ensure that at least one Station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system and that each current employee received in-house Stage II training regarding the purpose and operation of the vapor recovery system. Specifically, Stage II training for the Station representative and the employees had not been completed.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

58 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on documentation of the violation during the October 2, 2007 investigation date to the November 28, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$925

This violation Final Assessed Penalty (adjusted for limits) \$925

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 32**Case ID No.** 34981**Reg. Ent. Reference No.** RN101544252**Media** Petroleum Storage Tank**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$500	2-Oct-2007	7-Dec-2007	0.2	\$5	n/a	\$5
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost of training a Stage II representative in the operation and maintenance of the Stage II equipment.  
The date required is the investigation date and the final date is the date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$500

**TOTAL**

\$5

Screening Date 28-Nov-2007

Docket No. 2007-1880-PST-E

PCW

Respondent Best Mart, Inc. dba Kold Spot 32

Policy Revision 2 (September 2002)

Case ID No. 34981

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101544252

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Judy Kluge

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 115.222(1) and Tex. Health &amp; Safety Code § 382.085(b)

## Violation Description

Failed to comply with emission control requirements by failing to properly install the submerged fill tubes within six inches from the bottom of the tank. Specifically, the submerged drop tubes on the mid grade and super unleaded tank had eleven inches clearance from the bottom of the tanks.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

	1
	58
mark only one with an x	daily
	monthly
	quarterly
	semiannual
	annual
	single event

Number of violation days

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the October 2, 2007 to the November 28, 2007 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$2,312

This violation Final Assessed Penalty (adjusted for limits) \$2,312

**Economic Benefit Worksheet****Respondent** Best Mart, Inc. dba Kold Spot 32**Case ID No.** 34981**Reg. Ent. Reference No.** RN101544252**Media** Petroleum Storage Tank**Violation No.** 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$500	2-Oct-2007	11-Dec-2007	0.2	\$0	\$6	\$7
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to properly install the drop tubes. The date required is the investigation date and the final date is the date of compliance.

**Avoided Costs****ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs****Approx. Cost of Compliance**

\$500

**TOTAL**

\$7

## Compliance History

Customer/Respondent/Owner-Operator:	CN601585730	Best Mart, Inc.	Classification: AVERAGE	Rating: 1.02
Regulated Entity:	RN101544252	KOLD SPOT 32	Classification: AVERAGE	Site Rating: -0.75
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	14194	
Location:	1207 HIGHWAY 157 N, MANSFIELD, TX, 76063	Rating Date: September 01 07	Repeat Violator:	NO
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	December 11, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 11, 2002 to December 11, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Philip DeFrancesco Phone: (817) 588-5933

### Site Compliance History Components

- |  |                               |
|--|-------------------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes                           |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | Yes                           |
| 3. If Yes, who is the current owner?   | <u>Best Mart, Inc.</u>        |
|  | <u>Best Mini Mart, L.L.C.</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>Vista Stores, LLC</u>      |
|  | <u>FV-I, Inc.</u>             |
| 5. When did the change(s) in ownership occur?  | <u>10/17/2003</u>             |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 11/18/2003 | (252640) |
| 2 | 06/23/2004 | (288519) |
| 3 | 02/10/2005 | (292783) |
| 4 | 11/02/2007 | (597387) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |                          |
|--------------|--|--------------------------|
| Date:        | 06/23/2004   | (288519)                 |
| Self Report? | NO   | Classification: Moderate |
| Citation:    | 30 TAC Chapter 37, SubChapter I 37.815(a)<br>30 TAC Chapter 37, SubChapter I 37.815(b) |                          |
| Description: | FAILURE TO PROVIDE ACCEPTABLE FINANCIAL ASSURANCE.                                     |                          |
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BEST MART, INC. DBA KOLD SPOT  
32 AND KOLD SPOT 37  
RN101544252  
RN101564433**

§  
§  
§ **BEFORE THE**  
§  
§ **TEXAS COMMISSION ON**  
§  
§ **ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-1880-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Best Mart, Inc. dba Kold Spot 32 and Kold Spot 37 ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates two convenience stores with retail sales of gasoline at the following locations ("the Stations"):
  - a. Kold Spot 32, located at 1207 Highway 157 North in Mansfield, Tarrant County, Texas (the "Kold Spot 32 Station"), and
  - b. Kold Spot 37, located at 7414 Rendon Bloodworth Road in Mansfield, Tarrant County, Texas (the "Kold Spot 37 Station").
2. The Respondent's seven underground storage tanks ("USTs") at the Stations are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Stations consist of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.



4. The Respondent received notices of the violations alleged in Section II ("Allegations") on or about November 7, 2007 and November 18, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Seven Thousand Nine Hundred Eighty Dollars (\$27,980) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Hundred Forty-Nine Dollars (\$649) of the administrative penalty and Five Thousand Five Hundred Ninety-Six Dollars (\$5,596) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Twenty-One Thousand Seven Hundred Thirty-Five Dollars (\$21,735) of the administrative penalty shall be payable in 35 monthly payments of Six Hundred Twenty-One Dollars (\$621) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Stations:
  - a. Kold Spot 32 Station:
    - i. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent implemented a process for reporting a suspected release on December 12, 2007;
    - ii. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent investigated the suspected release and implemented appropriate corrective measures on November 28, 2007;



- iii. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent began conducting proper inventory control procedures and implemented a release detection method on December 7, 2007;
  - iv. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent submitted an amended UST registration to the TCEQ on December 11, 2007;
  - v. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent began maintaining Stage II records on-site on December 7, 2007;
  - vi. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that one Station representative successfully completed the required Stage II training and each current employee received in-house Stage II training on December 7, 2007; and
  - vii. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent properly installed drop tubes on December 11, 2007.
- b. Kold Spot 37 Station:
- i. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent began conducting proper inventory control procedures and implemented a release detection method on December 11, 2007;
  - ii. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent installed appropriate devices to prevent loosening or over-tightening of the Stage I equipment on December 7, 2007;
  - iii. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent implemented a release detection method on December 11, 2007;
  - iv. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent submitted an amended UST registration to the TCEQ on December 12, 2007;
  - v. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that the Respondent began maintaining Stage II records on-site on December 7, 2007; and
  - vi. The TCEQ Dallas/Fort Worth Regional Office received documentation verifying that one Station representative successfully completed the required Stage II training and each current employee received in-house Stage II training on December 7, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the



Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Kold Spot 32 Station, the Respondent is alleged to have:

1. Failed to report a suspected release to the agency within 24 hours of discovery, in violation of 30 TEX. ADMIN. CODE § 334.72, as documented during an investigation conducted on October 2, 2007. Specifically, inventory control records for September 2006 indicated a suspected release was not reported.
2. Failed to investigate a suspected release within 30 days of discovery, in violation of 30 TEX. ADMIN. CODE § 334.74, as documented during an investigation conducted on October 2, 2007. Specifically, inventory control records for September 2006 indicated a suspected release that was not investigated.
3. Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 2, 2007.
4. Failed to conduct reconciliation of detailed inventory control records at least once each month sufficiently accurate to detect a release as small as the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 2, 2007.
5. Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3) as documented during an investigation conducted on October 2, 2007. Specifically, the registration was not updated to reflect the current release detection method.
6. Failed to maintain Stage II records at the Station and make them available for inspection upon request by Commission personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(1), (7)(a), and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 2, 2007. Specifically, a copy of the California Air Resources Board ("CARB") Executive Order was not available for review at the time of the investigation.
7. Failed to ensure that at least one Station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system and that each current employee



received in-house Stage II training regarding the purpose and operation of the vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 2, 2007. Specifically, Stage II training for the Station representative had not been completed.

8. Failed to comply with emission control requirements by failing to properly install the submerged fill tubes within six inches from the bottom of the tank, in violation of 30 TEX. ADMIN. CODE § 115.222(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 2, 2007. Specifically, the submerged drop tubes on the mid grade and super unleaded tank had eleven inches clearance from the bottom of the tanks.

As owner and operator of the Kold Spot 37 Station, the Respondent is alleged to have:

1. Failed to conduct effective manual or automatic monthly inventory control procedures for the USTs at the Station, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on October 2, 2007.
2. Failed to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable CARB Executive Order and free of defects that would impair the effectiveness of the system, in violation of 30 TEX. ADMIN. CODE § 115.242(3)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 2, 2007. Specifically, the devices were not installed to prevent loosening or over tightening of the Stage I equipment.
3. Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 2, 2007.
4. Failed to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during an investigation conducted on October 2, 2007. Specifically, the registration was not updated to reflect the current release detection method, Stage I, and Stage II equipment information.
5. Failed to maintain Stage II records at the Station and make them available for inspection upon request by Commission personnel, in violation of 30 TEX. ADMIN. CODE § 115.246(1), (5), and (7)(A) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 2, 2007. Specifically, the Stage II maintenance records, test results, and a copy of the CARB Executive Order were not available for review at the time of the investigation.
6. Failed to ensure that at least one Station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system and that each current employee received in-house Stage II training regarding the purpose and operation of the vapor recovery system, in violation of 30 TEX. ADMIN. CODE § 115.248(1) and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on October 2, 2007. Specifically, Stage II training for the Station representative and the employees had not been completed.



### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Best Mart, Inc. dba Kold Spot 32 and Kold Spot 37, Docket No. 2007-1880-PST-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Stations operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by



facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Ordean  
\_\_\_\_\_  
For the Executive Director

8/25/2008  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

BEN MARRI  
\_\_\_\_\_  
Signature

3/31/08  
\_\_\_\_\_  
Date

BEN MARRI  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Best Mart, Inc. dba Kold Spot 32 and Kold Spot 37

PRESIDENT  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

